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Date: May 9, 2014

**TO: MEMBERS, BOARD OF DIRECTORS**

<b>I. AGENDA ITEM # AND TITLE :</b>	Open Agenda Item 6 - 2014 Legislative Update
<b>II. NAME AND PROGRAM:</b>	Rhonda Myers, Government Affairs
<b>III. ACTIVITY:</b>	<input checked="" type="checkbox"/> Informational <input type="checkbox"/> Request for Direction <input type="checkbox"/> Action Proposed
<b>IV. JUSTIFICATION:</b>	<input checked="" type="checkbox"/> Standard/Required Item <input type="checkbox"/> Board Request – New Item <input type="checkbox"/> New Topic from Staff

**V. EXECUTIVE SUMMARY:**

Several bills with the potential to impact State Fund and/or the workers' compensation industry were introduced at the beginning of the second year of the 2013/2014 Legislative session. The following is a summary of 12 bills with the most potential to impact State Fund and/or the workers' compensation industry.

**VI. ANALYSIS:**

This session, there is legislation that seeks to expand certain workers' compensation benefits for peace officers and hospital workers; enhance the protection of personally identifiable information, and streamline the provision of disclosable records under CPRA. There is also proposed legislation to increase penalties for unreasonably delayed benefits, and for fraud committed within the workers' compensation system. Regarding recently enacted workers' compensation reform, there is legislation that clarifies the Legislature's intent of SB 863. The United States Senate has also introduced a bill to extend the Terrorism Risk Insurance Act (TRIA).

It is early in the session and bills are frequently amended. Government Affairs will continue to monitor and assess all legislation that has the potential to impact State Fund and/or the industry and recommend appropriate action.

**VII. RECOMMENDATION:** N/A

**VIII. PRESENTATION EXHIBITS:** N/A

**IX. APPENDIX:** See attached

**AB 1035 (Perez) Workers' Compensation: Firefighters and Peace Officers  
In Assembly Unfinished Business**

<i>Desk</i>	<i>Policy</i>	<i>Fiscal</i>	<i>Floor</i>	<i>Desk</i>	<i>Policy</i>	<i>Fiscal</i>	<b><i>Floor</i></b>	<i>Conf. Conc.</i>	<i>Enrolled</i>	<i>Vetoed</i>	<i>Chaptered</i>
<i>1st House</i>				<i>2nd House</i>							

This legislation would increase the time frame for dependents to pursue death benefits for firefighters and peace officers from 240 to 420 weeks from the date of injury. The death must have resulted from a presumptive injury of cancer, tuberculosis, blood-borne infectious disease, or methicillin-resistant Staphylococcus aureus (MRSA) skin infection and the date of injury must have been during active service.

These provisions would not apply to cases that have been previously adjudicated or finalized, cases in which the existing time frame lapsed prior to January 1, 2015, or cases in which proceedings were initiated within 240 weeks from the date of injury and a final determination of no eligible dependents had been made. The increase would sunset on January 1, 2019.

This legislation would increase the number of public safety workers' cancer death claims by 7% and add approximately \$4.7 million annually to workers' compensation death benefit costs for cancer injuries alone, according to the Bickmore Risk Services report to the Commission on Health and Safety and Workers' Compensation on March 4, 2014. This prediction would be higher if AB 2052 is also enacted, which proposes to expand the peace officer occupations that qualify for the cancer presumption.

**AB 2052 (Gonzalez) Workers' Compensation  
In Assembly Suspense File**

<i>Desk</i>	<i>Policy</i>	<b><i>Fiscal</i></b>	<i>Floor</i>	<i>Desk</i>	<i>Policy</i>	<i>Fiscal</i>	<i>Floor</i>	<i>Conf. Conc.</i>	<i>Enrolled</i>	<i>Vetoed</i>	<i>Chaptered</i>
<i>1st House</i>				<i>2nd House</i>							

This legislation would expand workers' compensation presumptions for conditions of hernia, cancer, heart trouble and pneumonia, tuberculosis, biochemical exposure, and meningitis, to cover all peace officers under the California Penal Code.

All employees in California are covered by workers' compensation insurance for injuries caused by, or arising out of, their employment, but disputes often arise over whether an injury is in fact work-related. State law, however, has established that some conditions are to be presumed industrial. These situations are often referred to as "presumptions," and generally apply to law enforcement and firefighting occupations.

The provisions of this bill could present a considerable impact to the State of California and to State Fund's inventory of claim cases managed under the Master Agreement with the State. According to the Assembly Appropriations committee, an estimated 2,000 additional state employees would become conclusively covered under these injury presumptions. For peace officers of the California Highway Patrol (CHP) and the Department of Corrections and Rehabilitation (CDCR), and fire fighters of the Department of Forestry and Fire Protection (CDF), the average cost of an active cancer claim with an injury date of 2009 or older is \$86,486.

**AB 2378 (Perea) Workers' Compensation: Temporary Disability Payments**  
**Assembly Appropriations Committee hearing pending**

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chapters
1st House				2nd House							

This legislation would allow specified firefighters and peace officers to receive up to 1 year of paid leave due to industrial injury in addition to the current maximum temporary disability payment period of 2 years.

The Labor Code sets out the maximum time period injured workers can receive temporary disability (TD) payments. Currently, this period is up to 2 years of payments, and is paid at 2/3 of salary. Certain firefighters and peace officers have also been entitled to a separate paid leave benefit of up to 1 year at full salary, in addition to the 2 years of TD. These additional benefits are called simply by the Labor Code sections that define them, "4800 time", "4800.5 time", and "4850 time". However, in January 2013 the 1st District Court of Appeals handed down a decision in the case of *County of Alameda v. Bryan Knittel*, controverting established practice by determining that 4850 time falls within the 2 year time limit for TD. While the decision only specifically mentions 4850 time, the prevailing consensus is that the legal principle would equally apply to 4800 and 4800.5 time. This bill seeks to nullify the *Knittel* decision and aims to restore the extra year of benefits available to the affected public safety personnel.

**AB 2616 (Skinner) Workers' Compensation: Hospital Employers: Compensation**  
**Assembly Appropriations Committee hearing pending**

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chapters
1st House				2nd House							

This legislation would create a disputable presumption that a methicillin-resistant *Staphylococcus aureus* (MRSA) skin infection is a work-related injury for a hospital worker who provides direct patient care.

MRSA is a bacterial infection that is resistant to a large group of antibiotics and can be very serious. Hospital-acquired MRSA is usually found in immunocompromised and elderly patients or after surgery or life support operations. Community-acquired MRSA arises outside of a hospital but it can progress to a serious infection that may require hospitalization. The common incubation period for a MRSA infection is 2 to 10 days, but if a person is colonized (with bacteria present but not causing symptoms) it may take months or years before an infection occurs.

Hospitals have made great strides nationally in reducing hospital-acquired MRSA infections with a 54% decline between 2005 and 2011, according to the Centers for Disease Control and Prevention (CDC).

The California Workers' Compensation Institute (CWCI) recently analyzed the 393 MRSA claims that have been reported to the California Workers' Compensation Insurance System since 2000. Of those claims, 6% were initially rejected but subsequently accepted. It is unknown how many claims were denied but not disputed by the employee or affirmed by the court.

This legislation would create a presumption of injury for employees in a category not traditionally included in existing presumptions of injury, which generally apply to public safety

employees. There is an increase in costs each time a new presumption is created and the general trend is to increase accepted claims and costs over time.

**AB 1710 (Dickinson) Personal Information: Privacy**  
**To be heard in Assembly Banking & Finance on 5/5/14**

Desk	<b>Policy</b>	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would make several changes related to the security and handling of personal information used by businesses. Entities that accept payment by credit card, debit card, or payment device would be prohibited from storing payment-related data without an explicit policy limiting both the amount of data collected and length of time retained to only what is required for business, legal, or regulatory needs. Sensitive authentication data, such as verification codes, could not be preserved after a payment authorization. Specified data such as PIN or payment verification values, could no longer be saved. Businesses would be responsible for the cost of data breach notifications and any card replacement needed. Data security would now have to conform to the “Advanced Encryption Standard of the National Institute of Standards and Technology, Federal Information Processing Standards Publication 197.”

Security obligations would be extended to entities that maintain personal data, not just the entities that own or license it. Maintainers of data would be required to notify everyone affected by a security breach at the same time that the owner or licensee is notified. The business that was the source of the breach would be responsible for providing at least 24 months of appropriate services to prevent and mitigate identity theft for everyone whose name in combination with their social security, driver’s license, or California ID card number, was exposed. This service provision only applies if either the name or the specified data elements were not properly encrypted.

State Fund would have to review its data storage and security practices to ensure compliance with the numerous procedural changes. Currently, 12 months of post-breach credit monitoring are voluntarily provided. If this legislation passes, this would become mandatory in some situations, would have to be extended for at least 24 months, and would not just be limited to credit monitoring. State Fund would be liable for all costs related to notification and card replacement.

**SB 1337 (DeSaulnier) Public Records and Reports**  
**Senate Appropriations Committee hearing pending**

Desk	<b>Policy</b>	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would require state agencies to make records requested under the California Public Records Act (CPRA) available within 30 days of determining that the records were subject to public release. In unusual circumstances, the deadline may be extended by up to 14 days.

The California Public Records Act (CPRA) enables people to inspect or request copies of records held by both state and local public agencies. In general, any person may make a request to inspect any public record, with certain specified exceptions. The rights of access

under CPRA are counterbalanced by the rights of privacy, and therefore agencies are permitted a period of time to determine whether or not the requested records are subject to public disclosure.

According to the State Fund Public Records Office (PRO), records sometimes take longer than 30 days to produce. There were 12 valid CPRA requests in 2013, five of which took longer than 30 days to fulfill. The bill does not set forth consequences for failing to meet the deadline, however if a requestor filed a lawsuit for failing to receive records timely and prevailed, it would subject State Fund to liability for court costs and attorneys fees.

This legislation would add new requirements to the Government Code for reports made to specified state legislative and executive bodies. However, State Fund is exempted from that section of the Government Code, therefore, those changes would not apply.

Additional temporary resources could be needed to meet the 30-day deadline for records production. There is also the potential liability for court costs and attorneys fees if a requestor files suit over missing the deadline.

**AB 2604 (Brown) Workers' Compensation: Proceedings: Payment Delay**  
**Assembly Insurance Committee hearing pending**

Desk	<b>Policy</b>	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would increase the penalty for unreasonable delay or denial of workers' compensation payments to either 25% of the benefit in question, or \$10,000, whichever is greater.

Labor Code section §5814 contains a penalty provision to act as a deterrent to bad-faith conduct by employers and insurance carriers. The penalty is commonly called a "5814 penalty". Currently, the maximum penalty amount is \$10,000. This bill would substantially increase the dollar amount of that penalty, creating a much stronger disincentive to withhold benefit payments.

It is understood that amendments to narrow the scope of this legislation are pending.

**AB 2663 (Dababneh) Fraud Prevention**  
**Assembly Insurance Committee hearing pending**

Desk	<b>Policy</b>	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would raise the civil penalty to range from \$10,000 to \$25,000 for illegal referral and for other unlawful acts related to insurance claims in the workers' compensation system and other lines of insurance.

Fraudulent workers' compensation claims undermine the system and utilize resources that could be used for legitimate claims. The problem came to a head in 1991 and 1992 with a large number of "claim mills" in the Southern California region. These organizations involve doctors and lawyers and their agents, often called "runners, cappers, and steerers," who recruit people to file fraudulent claims. To combat this practice, legislation in 1991 made workers' compensation fraud a felony. Further legislative action was taken in 1993 to create civil penalties for workers' compensation fraud under the Labor Code and the Insurance

Code. The legislature declared that civil penalties were needed to provide necessary enforcement flexibility “to combat the fraud and abuse that is rampant in the workers’ compensation system.”

This legislation would increase the workers’ compensation system’s arsenal to combat fraud in the system and is expected to be cost-saving to the workers’ compensation system. Higher penalties serve as a deterrent to fraud while increasing the amount of money available for fraud investigation and prevention efforts.

**AB 2665 (Dababneh) Workers’ Compensation: Enforcement**  
**Assembly Insurance Committee hearing pending**

Desk	<b>Policy</b>	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would increase the fine for employers that fail to obtain workers’ compensation coverage to a minimum of \$25K for the first offense and \$75K for repeat offenses.

Currently, the fine for the first offense is a minimum of \$10,000 and \$50,000 for repeat offenders. Enforcement of these provisions is handled by the California Department of Insurance (CDI) Fraud Division. CDI reported 22 convictions for the period September 2012 through August 2013. The sentences included jail, probation, fines, and community service. Fines collected for these violations are deposited into the Workers’ Compensation Fraud Account and used to combat fraud.

**AB 2482 (Wilk) Workers’ Compensation: Utilization Review**  
**Assembly Insurance Committee hearing pending**

Desk	<b>Policy</b>	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

This legislation would prohibit an employer or its utilization review entity from requesting or accepting any compensation that may create or creates a conflict of interest in the utilization review process.

Workers’ compensation reform in 2012 created stringent conflict of interest standards for the workers’ compensation system by adding Labor Code §139.32. The code section lists the types and instances of prohibited conflicts and the penalties for violations and did not require regulations to implement the law. The new code section also applies to the utilization review process. Utilization review (UR) is the process used in the workers’ compensation system to determine medical necessity of requested medical treatment. In the UR process, only a physician can deny, delay, or modify a request for medical treatment and is additionally bound by statutory conflict of interest and professional conduct standards for the practice of medicine. No impact is expected because the proposal in this bill is expressed in existing law.

**AB 2732 (Committee on Insurance) Workers' Compensation**  
**Assembly Appropriations Committee hearing pending**

<i>Desk</i>	<i>Policy</i>	<b><i>Fiscal</i></b>	<i>Floor</i>	<i>Desk</i>	<i>Policy</i>	<i>Fiscal</i>	<i>Floor</i>	<i>Conf. Conc.</i>	<i>Enrolled</i>	<i>Vetoed</i>	<i>Chaptered</i>
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This legislation would clean-up and clarify various provisions of the 2012 reforms made by SB 863.

Lien reforms were enacted to reduce the volume of and litigation over workers' compensation liens. This included shortening the time frame to file a lien, implementing a lien filing or activation fee, and limiting assignment of a lien from the original provider to another party. However, friction in the system has developed over whether the limitation on lien assignments applies retroactively and who is responsible for reimbursing a filing or activation fee which may be ordered under certain conditions.

SB 863 also contained two drafting errors: disputes about a medical treatment appointment or medical-legal examination were inadvertently added to the list of issues eligible for an expedited hearing; and medical-legal expenses were eliminated from the list of costs recoverable by filing a lien in a workers' compensation claim.

This legislation would clarify that lien assignment limitations apply only to liens assigned on or after January 1, 2013, and specifies that this is declarative of existing law. It would also clarify that the employer is responsible for any reimbursement of a lien filing or activation fee owed to a lien claimant.

This legislation would eliminate disputes about a medical treatment appointment or medical-legal examination from the issues eligible for an expedited hearing. It would again allow a lien for medical-legal expenses.

This legislation would give the Division of Workers' Compensation Administrative Director the flexibility to create a form to request an Independent Medical Review that is up to two pages, rather than one page as currently mandated.

**S 2244 (Schumer) Terrorism Risk Insurance Program Reauthorization Act of 2014**  
**Senate Banking Committee hearing pending**

This federal legislation would extend the Terrorism Risk Insurance Act (TRIA) program for seven years. It would also increase the cost-share percentage for insurers from 15% to 20% and increase the amount of recoupment from \$27.5B to \$37.5B.

TRIA has provided a useful backstop for what could be truly catastrophic losses to workers' compensation programs across the nation. The premiums to pay for those losses cannot be priced with the same precision actuaries are able to apply to conventional workers' compensation liabilities. Without TRIA, in the event of a large-scale terrorist attack, state workers' compensation funds will be required to pay millions of dollars in workers' compensation claims without federal assistance, even though the federal government has assumed primary responsibility for preventing terrorist attacks. In addition, it is probable that the workers' compensation competitive market would collapse for some period of time.